

SENSITIVE

**FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT**

**MUR: 7141
COMPLAINT DATE: 9/23/16
NOTIFICATION DATE: 9/30/16
RESPONSE DATES: 10/13/16; 10/14/16; 10/24/16
ACTIVATION DATE: 1/27/17**

**STATUTE OF LIMITATIONS DATE: 8/8/2021
ELECTION CYCLE: 2016**

COMPLAINANT: UNITE HERE Local 11

**RESPONDENTS: Wang Jianlin
Wanda Group
Benxi Ding
Beverly Hills Residents and Businesses to Preserve Our
City, an Exploratory Committee
Wanda Beverly Hills Properties LLC
Wanda Los Angeles Properties Co., LTD
Athens BH Development LLC
Lakeshore East Parcel P, LLC
Magellan Development Group**

**RELEVANT STATUTES AND REGULATIONS: 52 U.S.C. § 30121
11 C.F.R. § 110.20**

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint in this matter alleges that Beverly Hills Residents and Businesses to Preserve Our City, a California state ballot measure committee established to oppose a local ballot measure, accepted foreign national contributions, and that foreign nationals directed the committee's efforts to oppose the ballot measure in violation of the Federal Election Campaign Act of 1971 (the "Act"). For the reasons discussed below, we recommend that

1 the Commission find no reason to believe that Wang Jianlin; The Wanda Group; Benxi Ding;
2 Beverly Hills Residents and Businesses to Preserve Our City, an Exploratory Committee;
3 Wanda Beverly Hills Properties LLC; Wanda Los Angeles Properties Co., LTD; Athens BH
4 Development LLC; Lakeshore East Parcel P, LLC; and Magellan Development Group
5 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20, and close the file.

6 **II. FACTS**

7 **A. Respondents**

8 Wanda Group is a Global Fortune 500 company based in China.¹ Wang Jianlin is the
9 Chairman of Wanda Group.² Wanda Group's activities include real estate and entertainment
10 ventures in the United States.

11 Lakeshore East Parcel P, LLC ("Lakeshore") and Magellan Development Group ("Magellan"),
12 two Illinois-based companies, are working with Wanda Group on a \$900 million real estate project
13 in Chicago.³ Lakeshore's four principals are also principals of Magellan, and each are U.S. citizens.⁴

14 Wanda Los Angeles Properties Co., LTD ("Wanda Los Angeles") is a U.S. subsidiary of
15 Wanda Group. The sole officer of Wanda Los Angeles is Benxi Ding, a Chinese national.⁵

16 Wanda Beverly Hills Properties LLC ("Wanda Beverly Hills") is also a U.S. subsidiary
17 of Wanda Group. The general manager of Wanda Beverly Hills is Xiang Shu, a Chinese

¹ See <https://www.wanda-group.com/>.

² See <https://www.wanda-group.com/chairman/>.

³ Compl. at 1-3.

⁴ The principals are Joel Carlins, James Loewenberg, David Carlins, and Robin Tebbe. See Magellan Resp. at 1; Lakeshore Resp. at 1.

⁵ Compl. at 2.

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1 national.⁶ The deputy general manager of Wanda Beverly Hills is Rohan a'Beckett, an
2 Australian native and permanent resident of the U.S.⁷

3 Athens BH Development LLC ("Athens") is an Arizona-based development company
4 that is working with Wanda Los Angeles and Wanda Beverly Hills as the development partner
5 on a real estate project called One Beverly Hills.⁸

6 Beverly Hills Residents and Businesses to Preserve Our City, an Exploratory Committee
7 (the "Ballot Measure Committee") is a ballot measure committee that registered with the state of
8 California on August 9, 2016,⁹ to oppose a ballot measure that would have approved an
9 expansion of the Hilton Hotel property in Beverly Hills.¹⁰

10 **B. Background**

11 Wanda Los Angeles and Wanda Beverly Hills are developing a real estate project in
12 Beverly Hills, California called One Beverly Hills.¹¹ In 2016, Wanda Group reportedly sought
13 to change the original city-approved plan for One Beverly Hills by increasing the size of the
14 development and adding a hotel on the property.¹² This proposed expansion apparently led to a
15 conflict with the adjacent Hilton Hotel property, which also sought to expand.¹³ A measure

⁶ *Id.*

⁷ *See* Wanda Beverly Hills Resp. at 13.

⁸ Compl. at 3.

⁹ *Id.*, Ex. A.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

1 which would have approved the Hilton expansion project ("Measure HH") was placed on the
2 local Beverly Hills ballot in November 2016.¹⁴

3 As noted above, the Ballot Measure Committee was established to oppose Measure HH.
4 Rohan a'Beckett (deputy general manager of Wanda Beverly Hills) is the Principal Officer of the
5 Ballot Measure Committee,¹⁵ and the Ballot Measure Committee is "sponsored"¹⁶ by Wanda
6 Beverly Hills and its development partner Athens,¹⁷ with "major funding"¹⁸ from Lakeshore.¹⁹
7 Wanda Beverly Hills and Wanda Los Angeles assert that Wanda Beverly Hills contributed funds
8 to the Ballot Measure Committee, but it obtained those funds through a \$1.2 million loan from
9 Lakeshore; Wanda Beverly Hills needed the loan because it did not yet have revenue from the
10 One Beverly Hills project.²⁰ They also assert that no foreign funds were used to fund or repay
11 the loan, that decisions regarding the loan were made by U.S. citizens, and that a'Beckett, a U.S.
12 permanent resident, made the decision to transfer the funds to the Ballot Measure Committee as a

¹⁴ The ballot measure was ultimately defeated. See Gene Maddaus, *Beverly Hills Voters Reject 26-Story Condo Initiative, Handing Victory to Wanda Group*, Variety, Nov. 9, 2016, available at <http://variety.com/2016/biz/news/beverly-hills-wanda-group-beverly-hilton-measure-hh-1201913873/>.

¹⁵ Compl. at 4.

¹⁶ According to the Complaint, California law sets forth four circumstances under which a company can be listed as a "sponsor" of a committee. They either must: contribute 80 percent or more of the committee's money; collect money for the committee using payroll deductions or dues; provide all or nearly all of the administrative services for the committee; or set the policies for soliciting or spending committee funds. See *id.* at 7 (citing Cal. Govt. Code § 82048.7).

¹⁷ Athens asserts that it made no monetary contributions to the Ballot Measure Committee and that Jay Newman, member of Athens and a principal of the Ballot Measure Committee, is a U.S. citizen. Athens Resp. at 1.

¹⁸ According to the Complaint, under California law, the "Major Funding" designation requires a contribution of \$50,000 or more. See Compl. at 4.

¹⁹ Lakeshore purportedly has not made any political contributions other than to the Ballot Measure Committee. *Id.* at 3.

²⁰ Wanda Resp. at 1; *id.*, Ex. 1.

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1 contribution.²¹ Wanda Beverly Hills sought the advice of the California Fair Political Practices
2 Commission ("FPPC") in reporting the contribution to the Ballot Measure Committee as a
3 contribution from Lakeshore.²²

4 III. LEGAL ANALYSIS

5 The Federal Election Campaign Act of 1971, as amended ("Act"), prohibits any "foreign
6 national" from "directly or indirectly" making a contribution or donation of money or any other
7 thing of value in connection with a Federal, State, or local election.²³ "Foreign national"
8 includes anyone who "is not a citizen of the United States or a national of the United
9 States . . . and who is not lawfully admitted for permanent residence[.]"²⁴

10 In addition, the law prohibits anyone from knowingly providing "substantial assistance in
11 the solicitation, making, acceptance, or receipt of a contribution or donation" by a foreign
12 national.²⁵ Commission regulations also state that foreign nationals "shall not direct, dictate,
13 control, or directly or indirectly participate in the decision-making process of any person, such as
14 a corporation, labor organization, political committee, or political organization with regard to
15 such person's Federal or non-Federal election-related activities, such as decisions concerning the

²¹ *Id.* at 1; *id.*, Ex. 1.

²² *See id.*, Ex. 3. The Wanda Response notes that parallel allegations were brought before the FPPC, and the FPPC "found no evidence" that Lakeshore was a foreign principal and dismissed the matter on October 6, 2016. *Id.* at 1; *id.*, Ex. 7. The response further notes that OGC determined in MUR 6678 (*Mindgeek USA, Inc., et al.*) that the Act's prohibition on foreign national contributions does not apply to state and local ballot measure committees. *Id.* at 2.

²³ 52 U.S.C. § 30121(a)(1); *see* 11 C.F.R. § 110.20(b)-(c). Courts have consistently upheld the provisions of the Act prohibiting foreign-national contributions, on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over activities and processes integral to democratic self-government, which include making political contributions or express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012).

²⁴ 52 U.S.C. § 30121(b); *see* 11 C.F.R. § 110.20(a)(3).

²⁵ 11 C.F.R. § 110.20(h)(1); *see* 52 U.S.C. § 30121.

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1 making of contributions, donations, expenditures, or disbursements in connection with elections
2 for any Federal, State, or local office or decisions concerning the administration of a political
3 committee."²⁶ The Commission has concluded that where permitted by state law, a U.S.
4 subsidiary of a foreign national corporation may donate funds for state and local elections if (1)
5 the donations derive entirely from funds generated by the subsidiaries' U.S. operations, and (2)
6 all decisions concerning the donations, except those setting overall budget amounts, are made by
7 individuals who are U.S. citizens or permanent residents.²⁷

8 The Complaint alleges that Lakeshore's funding of the Ballot Measure Committee was a
9 foreign contribution under the Act, because the only known ties between Lakeshore and the
10 Ballot Measure Committee are through Wanda Group.²⁸ The Complaint notes that individuals
11 and entities with ties to Wanda Group (including a'Beckett, Lakeshore, and Jay Newman of
12 Athens) appear in the Ballot Measure Committee's paperwork, and alleges that Jianlin, Wanda
13 Group's Chairman and a Chinese national, directed the Ballot Measure Committee's opposition
14 to Measure HH.²⁹

²⁶ 11 C.F.R. § 110.20(i).

²⁷ See Advisory Op. 2006-15 (TransCanada Corp.); see also Contribution, Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,943-44 (Nov. 19, 2002) (explanation and justification ("E&J")) (explaining that the statutory term "indirectly" does not cover U.S. subsidiaries of foreign corporations). In Advisory Opinion 2006-15 (TransCanada Corp.), the subsidiaries' board of directors, which included foreign nationals, set an overall, annual budget for political donations and disbursements. The board, however, delegated the decision-making authority to a group of individuals comprised exclusively of U.S. citizens or permanent residents. See AO 2006-15 at 5-6.

²⁸ See Compl. at 4-5.

²⁹ *Id.* at 4-7.

1 As an initial matter, it not clear from the relevant precedent that the scope of the foreign
2 national prohibition extends to the ballot initiative activity.³⁰ Assuming *arguendo* that it does,
3 none of the funds at issue appear to originate with a foreign national, nor does it appear that
4 foreign nationals participated in the decision to make the contribution to the Committee.³¹

5 Lakeshore, a domestic organization with U.S. citizens as principals, loaned \$1.2 million
6 to Wanda Beverly Hills, a domestic subsidiary of a foreign corporation.³² According to the loan
7 agreement, the funds were derived from U.S. revenue and are to be paid back with funds derived
8 from U.S. revenue.³³ And the Complaint does not provide evidence beyond the existence of
9 a business relationship between the managers of Lakeshore and Wanda Group showing that the
10 funds loaned to Wanda Beverly Hills originated with Wanda Group or any other foreign national.³⁴

11 Similarly, Wanda Beverly Hills states that a U.S. permanent resident (a'Beckett)
12 made the decision on behalf of Wanda Beverly Hills to make the contribution to the Ballot
13 Measure Committee. And although the Complaint includes information regarding Jianlin's
14 public lobbying for the project, as well as the fact that the general manager of Wanda Beverly

³⁰ See First Gen. Counsel's Rpt. at 10-14, MUR 6678 (Mindgeek USA, Inc., *et al.*). In MUR 6678, OGC recommended that the Commission not pursue an enforcement action in the absence of information in the record that a ballot measure committee's activity was "inextricably linked" with the election of a candidate, because there was no clear legal guidance on whether the foreign national prohibition extends to pure ballot initiative activity. First Gen. Counsel's Rpt. at 19, MUR 6678. The Commission split 3-3 on this recommendation. See Certification, MUR 6678 (Mar. 18, 2015); Statement of Reasons, Comm'r. Ravel, MUR 6678; Statement of Reasons, Comm'r. Weintraub, MUR 6678; Statement of Reasons, Comm'rs. Petersen, Hunter & Goodman, MUR 6678; Supp. Statement of Reasons, Comm'r. Goodman, MUR 6678. Here, there is no information in the record showing that the committee's activity was linked (inextricably or otherwise) with the election of a candidate.

³¹ See note 27 *supra*.

³² Wanda Resp., Ex. A.

³³ *Id.*

³⁴ See First General Counsel's Report at 8-9, MUR 7081 (Floridians for a Strong Middle Class) (business ties with foreign nationals, standing alone, is insufficient to support a finding that contribution was made by foreign national).

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1 Hills is a Chinese national, that information alone does not refute the assertion that a'Beckett
2 made the decision to contribute to the Ballot Measure Committee, nor does it indicate that any of
3 the foreign nationals named in the Complaint participated in the decision to make the
4 contribution.³⁵

5 Therefore, based on this information, we recommend that the Commission find no reason
6 to believe that the respondents violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20 in connection
7 with the allegation in the Complaint, and close the file.

³⁵ See AO 2006-15. *Cf.* MUR 6184 (Skyway Concession Company, LLC) (finding a violation where individual making the decisions regarding the contributions was a foreign national)

IV. RECOMMENDATIONS

1. Find no reason to believe Wang Jianlin; The Wanda Group; Benxi Ding; Beverly Hills Residents and Businesses to Preserve Our City, an Exploratory Committee; Wanda Beverly Hills Properties LLC; Wanda Los Angeles Properties Co., LTD; Athens BH Development LLC; Lakeshore East Parcel P, LLC; and Magellan Development Group violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20.
2. Approve the appropriate letters.
3. Close the file.

Lisa J. Stevenson
Acting General Counsel

5/26/17
Date

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